

FACEBOOK EXHIBIT AI

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Exhibit 61

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

This document relates to:

ALL ACTIONS

MDL NO. 2843
CASE NO. 3:18-MD-02843-VC-JSC

FACEBOOK'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF NAMED PLAINTIFFS' CONTENT AND INFORMATION

Judge: Hon. Vince Chhabria
Hon. Jacqueline Scott Corley
Special Master Daniel Garrie
Courtroom: 4, 17th Floor

JAMS Ref. No.: 1200058674

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1 **I. INTRODUCTION**

2 Plaintiffs' motion to compel seeks to revive a boundless demand that Plaintiffs conceded long
 3 ago—in court—sought data well beyond what Plaintiffs would be entitled to in this case. One year
 4 ago, Plaintiffs represented to Judge Corley:

5 Plaintiffs seek only a holding that the sensitive data Facebook collected about *ten Named*
 6 *Plaintiffs* and *shared* with third parties is relevant. Plaintiffs do not contend that information
 7 that was not shared is relevant, which substantially narrows the information Facebook would
 8 be required to produce in this case.

9
 10 Based on Plaintiffs' representations, Judge Corley issued a ruling that discoverable user data is data
 11 Facebook shared relating to the Named Plaintiffs, including any shared data in three categories
 12 Plaintiffs had requested. After Facebook reported its productions were complete, Plaintiffs told Judge
 13 Corley “[w]e just don't believe [that],” and they demanded a Rule 30(b)(6) deposition to test it. But
 14 once they got into the deposition, Plaintiffs tactically avoided that topic and instead asked about a host
 15 of issues having nothing to do with this case.

16 Now, seeking to capitalize on the presence of a new decider, Plaintiffs attempt to rewrite that
 17 history. Plaintiffs disown their concessions that “information that was not shared” is not relevant and
 18 say they are entitled to all data relating to the Named Plaintiffs—shared or not. They mischaracterize
 19 hearings before Judge Corley. And they conflate Judge Corley's instructions about the scope of their
 20 squandered deposition with the scope of the data she found discoverable.

21 Making matters worse, Plaintiffs' motion is itself a moving target. Throughout the motion,
 22 Plaintiffs flip-flop between saying the discoverable data in this case is *not* limited to shared data and
 23 arguing that the real issue is that Facebook has not yet produced all shared data. Then, after spinning
 24 in circles with arguments they have either abandoned or cannot support, Plaintiffs—out of nowhere—
 25 demand extensive discovery about Facebook's data infrastructure (not data about Named Plaintiffs).

26 Plaintiffs' motion crashes into a long list of roadblocks. *First*, Plaintiffs point to no actual
 27 deficiencies in Facebook's productions. After saying for more than one year that Facebook's
 28 productions are incomplete, rather than point to any evidence to support that false accusation, Plaintiffs

1 request invasive discovery to prove it. *Second*, Plaintiffs are not entitled to “discovery on discovery”
 2 because they do not believe Facebook’s productions are complete. Judge Chhabria, Judge Corley, and
 3 the Special Master have previously rejected Plaintiffs’ efforts to audit Facebook’s discovery process,
 4 and the Special Master should do so again here. *Third*, Plaintiffs are judicially estopped from
 5 demanding user data that was not shared with third parties after arguing to Judge Corley that this data
 6 is not relevant. Plaintiffs secured relief based on this concession to Judge Corley, and must be bound
 7 by it before the Special Master. *Fourth*, the list of demands in Plaintiffs’ motion—which seeks
 8 information about Facebook’s “data sources” that Plaintiffs say they will use “to develop an efficient
 9 discovery plan”—is not properly before the Special Master. This is not the topic on which the
 10 mediators declared impasse, Judge Corley has repeatedly rejected this request, and it largely concerns
 11 materials that Facebook provided in an effort to advance the parties’ negotiations and that Plaintiffs
 12 apparently have not bothered to review.

13 Moving discovery disputes from Judge Corley to the Special Master was not meant to be an
 14 opportunity to ditch past concessions or to put a new face on old arguments. The Special Master should
 15 see this motion for what it is: an opportunistic, wasteful, and abusive attempt to erase the proceedings
 16 before Judge Corley, gain access to information Plaintiffs have conceded is irrelevant, and hunt for
 17 *anything* to stall this case before it finally reaches the merits. The motion should be denied.

18 II. BACKGROUND

19 A. Plaintiffs initially demanded all data related to Named Plaintiffs.

20 In November 2019, Plaintiffs served RFP 9, which requests “[a]ll Documents relating to each
 21 of the Named Plaintiffs.” Ex. G at 12; *see also id.* at 12–13 (RFPs 10–13); Ex. K at 9 (Interrogatories
 22 16-17). At first blush that request may seem reasonable. But taken literally, it would require collection,
 23 review, and analysis of millions of documents and tables to determine whether any information within
 24 them—including information derived from aggregated and anonymized data—might relate back to a
 25 particular user. In response to this and similar requests, Facebook agreed to produce the content and
 26 information that Facebook associates with each Named Plaintiff’s account. This information is
 27 contained in the “Download Your Information” (“DYI”) file that Facebook makes available to users.

28 Facebook’s DYI tool reflects, in human-readable and producible form, the most complete

1 compilation of data Facebook maintains relating to any user. Ex. C ¶ 5. Beginning in February 2020,
 2 Facebook produced the information contained in the DYI file for each Named Plaintiff, plus additional
 3 information (such as a spreadsheet tracking how Plaintiffs adjusted their Facebook privacy settings).
 4 In total, Facebook produced approximately **one million pages** of user data relating to Named Plaintiffs.

5 Plaintiffs belittle the DYI file, claiming it is merely a record of what users post to Facebook.
 6 That is false. Most of the DYI files Facebook produced are tens of thousands of pages each; they
 7 average 32,493 pages each and range from 226 pages to a whopping **272,110 pages** (depending on how
 8 active a particular user is and what data they may have deleted).

9 Exhibit A is an average-size DYI file produced in this case, which—due to its size—Facebook
 10 provides via share file. Exhibit B is a list of categories of data contained in each user's DYI file (unless
 11 data in a given category does not exist or the user deleted it). *See also* Ex. C ¶ 6. Categories of
 12 information in users' DYI file include biographical information, ads viewed, friend lists, games played,
 13 location, logins and logouts, messages, page visits, photos, profile visits, religious and political views,
 14 status updates, and much more. Ex. B. **All told, the DYI files contain more than 100 categories of**
information that go well beyond a user's "platform activity." Facebook produced all of this despite
 16 repeatedly noting that much of it is not shared or relevant to any issue in this privacy litigation.

17 After Facebook completed these productions, Plaintiffs insisted that Facebook also locate and
 18 produce any other data that might, in any way, relate to any Named Plaintiff, and any materials derived
 19 from that data. They focused on a data warehouse called Hive and demanded that Facebook produce
 20 any information in Hive that might be derived, in full or in part, from data about the Named Plaintiffs.
 21 Facebook explained this would not be possible because Hive stores more than 12 million database
 22 tables and is not indexed by user, so there is no way to search across all tables at once for an individual
 23 user's ID. Ex. L at 12–15; *see also* Ex. E ¶ 7. Instead, each of Hive's 12 million tables would need to
 24 be searched individually for any information relating back in any way to a Named Plaintiff, which
 25 would be nearly impossible, given both the volume of Hive data and the fact that much of the data in
 26 Hive is anonymized. *See id.* Facebook further explained there would be no reason to take on such an
 27 undertaking because third parties do not have access to Hive tables. *See id.*

28 **B. Plaintiffs conceded that only data that was shared with third parties is relevant.**

1 After nearly one full year of negotiations, the parties briefed the issue to Judge Corley. In that
 2 briefing, Facebook argued that Judge Chhabria’s motion-to-dismiss order limits this case to data that
 3 users themselves share *on Facebook*—all of which had been produced. *See* Ex. L at 10–15. Plaintiffs
 4 disagreed, arguing that the “sensitive information that Facebook collects and shares with third parties
 5 is much more extensive.” Ex. M at 1. Plaintiffs specifically demanded that Facebook also produce
 6 materials reflecting users’ off-platform activity and what they called “derived” information.

7 After four rounds of briefing, Plaintiffs shifted gears in a sur-reply. They assured Judge Corley
 8 that their request for “[a]ll Documents relating to each of the Named Plaintiffs” was narrowly tailored,
 9 emphasizing that they sought “only a holding that the sensitive data Facebook collected about *ten*
 10 *Named Plaintiffs* and *shared* with third parties is relevant.” Ex. O at 9 (emphasis in original). They
 11 even argued that Judge Chhabria’s holding that Plaintiffs had standing was *based on* the fact that certain
 12 information about them had been shared. *Id.* at 5. Plaintiffs clarified:

13 Plaintiffs do not demand, as Facebook repeatedly claims, that “Facebook search *millions* of
 14 disaggregated data sets for any data to have ever crossed Facebook’s systems relating to a Named
 15 Plaintiff and any derivative materials drawing on that data – such as data sets tracking hours of peak
 16 user activity to monitor strains on Facebook’s systems.” Opp’n at 6. To the contrary, Plaintiffs seek
 17 only a holding that the sensitive data Facebook collected about *ten Named Plaintiffs* and *shared* with
 18 third parties is relevant. Plaintiffs do not contend that information that was not shared is relevant,
 19 which substantially narrows the information Facebook would be required to produce in this case.
 20

21 *Id.* at 9 (emphasis in original). Plaintiffs repeated this refrain throughout their brief:

- 22 ● “This discovery dispute concerns sensitive user information that Facebook has shared with third
 23 parties without users’ consent.” *Id.* at 1.
- 24 ● “[S]ensitive user information is relevant if Facebook shared it without users’ consent.” *Id.* at 2.
- 25 ● “[T]he legal theories upheld at the pleading stage” turn on “whether Facebook shared [sensitive
 26 information] with third parties.” *Id.* at 4.
- 27 ● “Plaintiffs have standing . . . because their sensitive information was disseminated to third
 28 parties in violation of their privacy.” *Id.* at 5 (quotation marks and citation omitted).
- 29 ● “Plaintiffs seek an order holding that all sensitive data about the ten Named Plaintiffs that
 Facebook shared with or made accessible to third parties is relevant to this action.” *Id.* at 9.

1 Judge Corley then issued a short order (Ex. P) largely adopting Plaintiffs' sur-reply position:

2 Plaintiffs correctly argue that Facebook's restrictive view of relevant discovery would exclude an
 3 enormous amount of information that Facebook collects and shares with third parties about
 4 Facebook's users. The district court's order (Dkt. No. 298) did not limit Plaintiffs' claims to only
 5 challenging the sharing of data Facebook collects from a user's on-platform activity; the claims also
 6 challenge Facebook's sharing of user data and alleged failure to monitor how third parties used such
 7 shared information.

8 To comply with Judge Corley's order, Facebook looked for any categories of individual user
 9 data that could have been shared but had not been produced. For a basic technological reason,
 10 Facebook found none. When a third party—such as an app developer or business partner—obtains
 11 user-related data, it accesses it through an “application programming interface,” or “API.” Ex. E ¶¶ 3–
 12 7. These APIs pull information exclusively from Facebook's “Social Graph,” not data warehouses like
 13 Hive. *See id.* A user's DYI file, which Facebook produced for all Named Plaintiffs, contains the most
 14 complete current set of data about that user that is in the Social Graph (and more). *See* Ex. C ¶ 5.

15 **C. Judge Corley allowed Plaintiffs to conduct a Rule 30(b)(6) deposition.**

16 In a December 2020 joint status report, Plaintiffs again demanded that Facebook produce
 17 additional information regarding the Named Plaintiffs. *See* Ex. Q at 1–2. Facebook explained that it
 18 was conducting an investigation but “[t]o Facebook's knowledge, the materials it produced reflect the
 19 information related to the Named Plaintiffs that could have been shared with third parties.” *Id.* at 9.

20 Plaintiffs told Judge Corley that they found it “impossible to believe” there was no more
 21 discoverable “information that exists.” Ex. R at 19:14–15; *id.* at 19:22 (Facebook's representation is
 22 “just impossible for us to believe”); *id.* at 28:15–16 (“We just don't believe . . . their description of
 23 what is or is not shared or made accessible.”). When pressed, Plaintiffs gestured at “information [used]
 24 to target [ads to] the Plaintiffs,” and Judge Corley redirected them back to *shared* information: “No,
 25 no, no, no. I don't think so. . . . This is—this came from Cambridge Analytica and that they had access
 26 to information.” *Id.* at 23:21–25. When Plaintiffs pushed ahead, Judge Corley again focused back on
 27 shared information: “What did you mean in your sur-reply by ‘shared’?” *Id.* at 24:13–14. Plaintiffs
 28

1 were unable to provide any clear answer. We suggest the Special Master review this transcript.

2 To address Plaintiffs’ “disbelief . . . as to how Facebook operates,” Judge Corley determined
 3 “we just need somebody under oath saying: No, this is how it operates.” *Id.* at 26:7–9. Judge Corley
 4 allowed Plaintiffs to conduct a Rule 30(b)(6) deposition “to verify the representation that yes, we
 5 collect this information—inferential data, but it is not made accessible to third parties.” *Id.* at 35:3–5.

6 Plaintiffs deliberately squandered that opportunity. They issued a deposition notice on 12 broad
 7 topics, many having nothing to do with the case. Ex. S. Judge Corley effectively quashed this notice,
 8 stating: “That was way beyond what I had in mind. So I don’t want to talk about your notice.” Ex. T
 9 at 17:15–16. Judge Corley *again* explained that the deposition was intended to allow Plaintiffs to
 10 explore whether shared data had not been produced, noting “this is pretty basic stuff.” Ex. T at 19:21–
 11 22. But Plaintiffs ignored those instructions and used the deposition to explore a host of unrelated
 12 issues, including using nearly two hours to ask questions about how Facebook places ads. *See* Ex. V.
 13 Plaintiffs declined to ask even basic questions to test their professed disbelief about what user-related
 14 data Facebook makes accessible to third parties. *Id.* Plaintiffs never even asked, “Are you aware of
 15 any types of individual user data Facebook shares that are not in the DYI data Facebook produced?”

16 **D. Plaintiffs reverted to their initial demands for all data relating to Named Plaintiffs.**

17 After the deposition, Plaintiffs reverted to their initial demand for “all data and information
 18 relating to the Named Plaintiffs,” even if never shared. Ex. W. Facebook responded on April 1, 2021,
 19 noting this “directly contradict[ed] the representations Plaintiffs made to the Court in their prior
 20 briefing,” and confirmed it had not identified shared user data beyond what it had produced. Ex. X at
 21 2. Facebook explained again that “[t]hird parties who are able to access individualized user data access
 22 that data through APIs that pull from Facebook’s Social Graph only, and the DYI files Facebook
 23 produced reflect[] a human-readable version of the data relating to each Named Plaintiff in Facebook’s
 24 Social Graph.” *Id.* at 6. Plaintiffs never responded and refused to address whether they were changing
 25 their position. *See* Ex. Z. Instead, they filed this motion, arguing Judge Corley’s order “is not limited
 26 to ‘shared’ information.” Mot. at 2. Plaintiffs never once articulated that position over the prior year.

27 **III. ARGUMENT**

28 The Special Master should deny Plaintiffs’ motion.

A. Facebook's productions under Discovery Order 9 are complete.

Facebook has confirmed repeatedly that its productions of potentially shared data relating to the Named Plaintiffs are complete.¹ Plaintiffs identify no shared data missing from those productions. Instead, they say they are entitled to *all* data relating in any way to the Named Plaintiffs. But as Plaintiffs have admitted, there is no genuine dispute that this case is about *shared* data.

1. The scope of discovery is limited to data that was shared with third parties.

The complaint, Judge Chhabria’s motion-to-dismiss order, Plaintiffs’ briefing, Judge Corley’s discovery order, and the hearings before Judge Corley all make crystal clear that the only user data at issue in this *privacy* class action is data *that was shared with or made accessible to third parties*. As Judge Chhabria put it in the very first sentence of his motion-to-dismiss order: “This lawsuit, which stems from the Cambridge Analytica scandal, is about Facebook’s practice of sharing its users’ personal information with third parties.” Ex. F at 1. Much to Plaintiffs’ chagrin, the case is *not* about “targeted advertising” or “psychographic marketing” (which Plaintiffs avoid mentioning by name but cannot resist bringing up more subtly, *see* Mot. at 7). While not relevant, Facebook has confirmed repeatedly that it does not share individual user data with advertisers when it places ads. *See also* Ex. D. Nor is this case about all of the ways in which Facebook collects, maintains, and uses data.

With their feet to the fire in briefing before Judge Corley, Plaintiffs admitted this. They told Judge Corley Facebook did *not* need to “search millions of disaggregated data sets for any data to have ever crossed Facebook’s systems relating to a Named Plaintiff and any derivative materials drawing on that data.” Ex. O at 9 (quotation marks and emphasis omitted). Instead, they sought “only a holding that the sensitive data Facebook collected about *ten Named Plaintiffs* and *shared* with third parties is relevant.” *Id.* (emphasis in original). And they promised that they did “**not contend that information that was not shared is relevant.**” *Id.* (emphasis added). In reliance on those promises, Judge Corley held that discoverable user data is data that was shared with third parties, including any shared data in specific categories Plaintiffs requested. Ex. P at 2.

At hearings that took place after Judge Corley issued her order, Plaintiffs again acknowledged

¹ Plaintiffs recently disclosed information identifying additional Facebook accounts for certain Named Plaintiffs. Facebook is collecting and will produce the information associated with these accounts.

1 that what they “said in [their] reply was information shared or made accessible [is relevant],” which
 2 they said meant “if it was put in a place or utilized in a way where third parties had access to it.” Ex.
 3 R at 18:15–16, 23–25. Judge Corley emphasized that the parties were both discussing information that
 4 was “shared” or “made accessible.” *Id.* at 19:6; *see also id.* at 19:3–4. One month later, Judge Corley
 5 reiterated that “[t]he question is what did they gather, and then what was shared.” Ex. T at 21:13–14.

6 **2. Plaintiffs have not identified any deficiencies in Facebook’s productions.**

7 Facebook has repeatedly confirmed that it has not identified user data that could have been
 8 shared with third parties beyond what is reflected in the Named Plaintiffs’ DYI files. Plaintiffs have
 9 done nothing to rebut that confirmation.

10 The best way to understand the nature and extent of a user’s DYI file is to view one. Exhibit A
 11 (provided via share file) is the DYI file for Terry Fischer (a Named Plaintiff). This file contains nearly
 12 2,000 documents and more than 16,000 pages. *See Ex. A.* A simple review makes clear that it is not
 13 limited, as Plaintiffs say, to information users themselves post on Facebook. For example, Plaintiffs
 14 say DYI files exclude “information collected and inferred by Facebook about users,” Mot. at 2, but Ms.
 15 Fischer’s DYI file contains a 22-page list of approximately 560 interests Facebook has inferred for her.
 16 *See Ex. A at FB-CA-MDL-00405315–5336.* These include general interests like American culture,
 17 books, comics, faith, and journalism; more specific interests like diabetes mellitus awareness, the
 18 Kitsap Sun, PragerU, and the Non-GMO Project; and many others. *See id.* Plaintiffs also say DYI
 19 files exclude “information collected from off-platform activity,” Mot. at 2, but Ms. Fischer’s file
 20 includes over 370 pages of off-platform activity, *see Ex. A at FB-CA-MDL-00405489–5860*, plus a
 21 13-page list of the names of businesses she visited off Facebook, *see id.* at FB-CA-MDL-00405476–
 22 5488. For instance, Ms. Fischer’s file shows that, among hundreds of other activities, she made a
 23 purchase from JCPenney on October 16, 2019, *see id.* at FB-CA-MDL-00405558; interacted with
 24 winred.com on 30 occasions between August and October 2019, *see id.* at FB-CA-MDL-00405513–
 25 5514; visited diynetwork.com on 36 occasions between October 2019 and January 2020, *see id.* at FB-
 26 CA-MDL-00405641–5643; and accessed a Bible app (YouVersion Bible App + Audio, Daily Verse,
 27 Ad Free) almost every day between July 26, 2019 and January 21, 2020, *see id.* at FB-CA-MDL-
 28 00405758–5772. The information contained in a user’s DYI file is the most complete set of data

1 Facebook maintains about any user and the best representation of the data about a user in the Social
 2 Graph, from which the APIs that share data pull. *See* Ex. C; Ex. E.

3 In arguing that Facebook's voluminous productions may be incomplete, Plaintiffs pretend not
 4 to understand how Facebook shared user-related data with third parties. They insinuate that user data
 5 is shared in various complex ways that Plaintiffs and the Special Master may not comprehend. *See*
 6 Mot. at 6–7. And, three-and-a-half years after filing a lawsuit alleging that Facebook wrongfully shared
 7 their data, Plaintiffs wax philosophical over “what sharing information means.” *Id.* at 11.

8 Those arguments are decoys. Plaintiffs know—as their prior briefing and discovery requests
 9 indicate—that the data sharing at issue in this case takes place through APIs. Plaintiffs' interrogatories
 10 ask Facebook to identify specific categories of APIs it uses to share data, Ex. K; in response Facebook
 11 has disclosed expansive lists of APIs and the data they pull spanning more than 300 pages, Ex. U.
 12 Plaintiffs have also subpoenaed numerous third parties asking them to disclose the APIs through which
 13 they accessed user data. *E.g.*, Ex. H at 8 (“identify each of Facebook's application programming
 14 interfaces ('APIs') [it] used to access or obtain” user data).² And in the same sur-reply in which they
 15 conceded the only user data relevant to this case is shared data, Plaintiffs also conceded: [REDACTED]

16 [REDACTED] Ex. O at 9. Plaintiffs' sudden attempt
 17 to throw up smoke about “what sharing information means” is as disingenuous as it is unsupported.

18 **B. Plaintiffs' distrust does not entitle them to “discovery on discovery.”**

19 Unable to identify any categories of shared data that are not reflected in the Named Plaintiffs'
 20 DYI files, Plaintiffs return to their usual refrain that they do not believe Facebook's representations
 21 and need more discovery to test them. Plaintiffs have already squandered an opportunity Judge Corley
 22 gave them to do so, and the Special Master should reject this recycled argument.

23 **Plaintiffs are not entitled to check Facebook's homework.** “A plaintiff's mere suspicion that

24 ² *See* 3/3/20 Subpoena to Brayola Fitting Technologies; 3/3/20 Subpoena to Bumble Trading, Inc.; 3/3/20
 25 Subpoena to Coffee Meets Bagel, Inc.; 3/3/20 Subpoena to DNP Imagingcomm America Corporation; 3/3/20
 26 Subpoena to Flo Health, Inc.; 3/3/20 Subpoena to Netflix, Inc.; 3/3/20 Subpoena to On the Rebound, Inc.; 3/3/20
 27 Subpoena to Spotify USA, Inc.; 3/3/20 Subpoena to Tinder, Inc.; 3/3/20 Subpoena to United Parcel Service,
 28 Inc.; 3/3/20 Subpoena to Walgreens Company; 3/3/20 Subpoena to Warner Brothers Entertainment, Inc.; 3/3/20
 Subpoena to Yahoo!, Inc.; 3/3/20 Subpoena to Zoosk, Inc.; 5/21/20 Subpoena to Six4Three LLC; 7/16/20
 Subpoena to 3DNA Corp. (DBA NationBuilder); 7/16/20 Subpoena to CubeYou, Inc.; 7/16/20 Subpoena to
 FullContact, Inc.; 8/7/20 Subpoena to DigitalStakeout, Inc.; 8/7/20 Subpoena to X1 Discovery, Inc. Facebook
 can provide these subpoenas upon request if the Special Master would like them.

1 additional documents must exist is an insufficient basis to grant a motion to compel.” *Bresk v.*
 2 *Unimerica Ins. Co.*, 2017 WL 10439831, at *5 (C.D. Cal. Nov. 16, 2017). For this reason, “discovery
 3 on discovery” is disfavored and, to be both relevant and proportional to the needs of the case, a party
 4 seeking it must show a specific deficiency in the other party’s production.” *Uschold v. Carriage Servs.,*
 5 *Inc.*, 2019 WL 8298261, at *4 (N.D. Cal. Jan. 22, 2019) (quotation marks and citation omitted); *see*
 6 *also, Brewer v. BNSF Railway*, 2018 WL 1756432, at *4 (D. Mont. Jan. 11, 2018) (“a court must guard
 7 against excessive probing into a party’s meta-discovery in order to prevent belabored discovery.”).

8 Plaintiffs have not identified anything beyond their own speculation to show a deficiency in
 9 Facebook’s productions of potentially shared information, much less a “specific deficiency.”
 10 Plaintiffs’ cursory attempt to do so adopts their usual strategy of plucking isolated lines out of context.
 11 They rely on a document that Facebook has repeatedly told them outlines *hypothetical* capabilities—
 12 not actual practices—and this is clear on the face of the document. Mot. at 9. Plaintiffs similarly cite
 13 a document entitled “Ads and Measurement” and deliberately conflate data the document indicates was
 14 available to place ads with data Facebook *shared* with app developers. *Id.* at 7; Ex. D ¶ 3. Plaintiffs
 15 also bizarrely cite a question Facebook asked app developers that has nothing to do with data sharing,
 16 Mot. at 10; misconstrue a document where employees discuss *how to classify data as UII* to be
 17 something sinister, *id.*; and cite various documents discussing data Facebook maintains without making
 18 any effort to show that data is shared, *id.* at 7. Finally, Plaintiffs claim shared information has not been
 19 produced because the DYI file does not include “location-related metadata.” Mot. at 10. But the DYI
 20 file includes location information, *e.g.*, Ex. A at FB-CA-MDL-00417382, and—where a user allowed
 21 it—extensive lists of the user’s GPS coordinates.³ None of Plaintiffs’ cherry-picked quotes
 22 demonstrates a “specific deficiency” in Facebook’s productions.

23 **Facebook has disclosed the types of data it shares.** *See, e.g.*, Ex. U. Plaintiffs suggest the
 24 typical rules of discovery do not apply here because “the question of what information Facebook shared
 25 is *the* central issue in this case.” Mot. at 11. That is nonsense. Facebook has already disclosed the
 26 relevant APIs at issue in response to Plaintiffs’ requests. Ex. U. What Plaintiffs apparently mean is

27 ³ Ms. Fischer’s DYI file does not include this data, likely because her settings did not allow it to be collected.
 28 Ex. AB includes 27 pages from separate DYI file Facebook produced for Plaintiff Jason Ariciu, listing hundreds
 of latitudes and longitudes where Facebook estimates he logged into Facebook over a 6-month period.

1 that they now want to audit *all* of Facebook’s information so that *they* can decide what was shared (and
 2 thus relevant). That is a nonstarter: a “requesting party . . . must rely on the representations of the
 3 producing party or its representative that it is producing all responsive, relevant, and non-privileged
 4 discovery.” *Han v. Futurewei Techs., Inc.*, 2011 WL 4344301, at *5 (S.D. Cal. Sept. 15, 2011). And
 5 even if Facebook did produce all of the information relating to the Named Plaintiffs, Plaintiffs would
 6 still have to rely on Facebook to determine which categories of information could have been shared.

7 **Plaintiffs already had an opportunity to probe Facebook’s representations, and they**
 8 **squandered it.** Judge Corley previously allowed Plaintiffs to conduct a Rule 30(b)(6) deposition to
 9 address their “disbelief . . . as to how Facebook operates.” Ex. R at 26:7–8. Facebook made its then-
 10 VP of Platform Partnerships, Konstantinos Papamiltiadis, available. Mr. Papamiltiadis had more than
 11 eight years of experience at Facebook and more than 120 reports, and he spent almost 20 hours
 12 preparing. Plaintiffs deliberately wasted that opportunity and tactically avoided asking *any* questions
 13 to confirm whether Mr. Papamiltiadis was aware of types of shared data that Facebook had not already
 14 produced. *See supra* at 6. Facebook urges the Special Master to review the deposition transcript.

15 Plaintiffs’ failure to use the Rule 30(b)(6) deposition for its intended purpose does not entitle
 16 them to admittedly irrelevant information. The biggest tell in Plaintiffs’ motion is that it never—not
 17 once—cites to Mr. Papamiltiadis’s deposition. In a motion to compel documents that are ostensibly
 18 for Plaintiffs to verify Facebook’s representations that its productions are complete, one would expect
 19 the centerpiece to be the deposition Judge Corley authorized for that very purpose. Its absence is
 20 nothing short of extraordinary, and it would be astonishing if the true explanation were not so obvious:
 21 Plaintiffs do not want verification that they have all categories of potentially shared user data. Instead,
 22 as discovery nears its end,⁴ Plaintiffs are desperate for *anything* that will breathe new life into their
 23 dying case. That is why they spent their Rule 30(b)(6) deposition exploring *new* potential avenues of
 24 litigation instead of verifying that the productions relating to *this* case were complete. That is why,
 25 years into a case about data sharing, they raise questions about “what sharing information means”

26
 27 ⁴ Even now, Plaintiffs do not demand all of the information they will eventually seek; they demand a list of
 28 information that they intend to later “use . . . to develop an efficient discovery plan.” Mot. at 14. Plaintiffs’
 endless discovery campaign, if successful, guarantees that discovery will blow far beyond the substantial
 completion deadline.

1 without even attempting to supply an answer. Mot. at 11. And that is why they claim (baselessly) that
 2 “Facebook itself does not know what information may have been shared with third parties,” *id.* at 10—
 3 conflating questions about *what particular data may have been shared about a specific user* (which
 4 Facebook cannot identify) with *what categories of data could be shared* (which Facebook has identified
 5 and produced). *See id.* at 10–11. Years into this case, as the discovery deadline approaches and after
 6 throwing away their opportunity to test Facebook’s production, Plaintiffs are entitled to nothing more.

7 **Plaintiffs conflate the scope of the deposition Judge Corley allowed with the scope of data**
 8 **she found discoverable.** In authorizing a Rule 30(b)(6) deposition, Judge Corley allowed Plaintiffs to
 9 *ask questions* about information Facebook maintains that may not have been shared—with the goal of
 10 identifying which types of information *were* shared. *See* Ex. T at 21:13–14 (“The question is what did
 11 they gather, and then what was shared.”). Judge Corley did *not* order Facebook to produce data that
 12 was never shared—if she had, there would have been no need for the deposition. Plaintiffs pluck
 13 isolated statements from the hearings to tell a different story, but the transcripts—just like the parties’
 14 underlying briefing on this issue—speak for themselves. Facebook encourages the Special Master to
 15 read these materials in full. *See* Exs. R, T (transcripts); *see also* Exs. L, M, N, O (underlying briefs).

16 **C. Plaintiffs are judicially estopped from seeking information that was not shared.**

17 Even if Plaintiffs could otherwise seek “all” information related to the Named Plaintiffs, they
 18 are judicially estopped from doing so here based on their unequivocal representations to Judge Corley.

19 “The doctrine of judicial estoppel is an equitable doctrine a court may invoke to protect the
 20 integrity of the judicial process,” and it was “developed to prevent litigants from ‘playing fast and
 21 loose’ with the courts by taking one position, gaining advantage from that position, then seeking a
 22 second advantage by later taking an incompatible position.” *United Nat’l Ins. Co. v. Spectrum*
 23 *Worldwide, Inc.*, 555 F.3d 772, 778 (9th Cir. 2009). “In determining whether to apply the doctrine,” a
 24 court will “typically consider (1) whether a party’s later position is ‘clearly inconsistent’ with its
 25 original position; (2) whether the party has successfully persuaded the court of the earlier position, and
 26 (3) whether allowing the inconsistent position would allow the party to ‘derive an unfair advantage or
 27 impose an unfair detriment on the opposing party.’” *United States v. Ibrahim*, 522 F.3d 1003, 1009
 28 (9th Cir. 2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001)).

1 There could not be a more apt description of Plaintiffs' conduct. Their present position is flatly
 2 contrary to their position before Judge Corley. *Compare* Ex. O at 9 ("Plaintiffs do not contend that
 3 information that was not shared is relevant"), *with* Plaintiffs' Mot. at 2 ("Discovery Order No. 9 is not
 4 limited to 'shared' information."). Plaintiffs persuaded Judge Corley of their earlier position—that
 5 relevant information is limited to data Facebook shares—and obtained a favorable discovery order as
 6 a result. Plaintiffs cannot now take back their concessions and demand new discovery on the eve of
 7 substantial completion, when they already conceded it is not relevant, the Court issued a ruling based
 8 on that representation, and the parties agreed to a substantial completion deadline based, in part, on
 9 Facebook's understanding that this issue had been put to bed.

10 **D. The information Plaintiffs now seek is nonresponsive and otherwise unavailable.**

11 Following a familiar pattern, after asserting Facebook's productions are incomplete, Plaintiffs
 12 shift gears. Rather than demand user data they believe was not produced, they abruptly demand
 13 extensive discovery about Facebook's sources of electronically stored information ("ESI").⁵

14 Plaintiffs' list of demands is not the issue at impasse. The Special Master declared impasse
 15 regarding Facebook's "[p]roduction of Named Plaintiffs' data in compliance with [Judge Corley's
 16 Order]," 2021.10.06 Email from D. Garrie, after Plaintiffs complained Facebook had not made "a
 17 complete production of all data it has collected about [the Named Plaintiffs]," Ex. Y at 4. When forced
 18 to put pen to paper, Plaintiffs find no support for that request, so they pull out a familiar trick: They
 19 raise a different issue that itself has a complicated history. Making matters worse, none of the discovery
 20 requests Plaintiffs move on seek the materials they now demand. The Special Master instructed the
 21 parties they may brief only the impasse topic, and should deny Plaintiffs' request for this reason.⁶

22 Judge Corley has also repeatedly rejected Plaintiffs' demands for discovery about Facebook's

23 ⁵ Plaintiffs seek to "compel Facebook to identify all data sources that may contain information relating to the
 24 Named Plaintiffs," which they define in the final paragraph of their motion to mean "(1) the name of the database
 25 or data log; (2) a description of the data source's purpose and function; (3) information about the default retention
 26 status of the data source (at a minimum, whether it is retained and for how long); (4) information about the
 27 current retention status of the data source (at a minimum, whether it is retained and for how long); and (5) where
 28 current retention status differs from default retention status, the date the change was implemented." Mot. at 13–
 14. They further demand, "at a minimum," "(1) the data schema; (2) definitions and descriptions of each field;
 (3) tool(s) which Facebook use to search each data source; and (4) instruction sets and manuals for all tools
 identified as being used by Facebook to search any data source identified in this step." *Id.* at 14.

⁶ See Protocol for Resolving Discovery Disputes ¶ 2. The Special Master separately advised the parties that he
 intends to "redline" any portions of the parties' briefing that strays beyond the impasse topic.

1 sources of ESI. The parties invested nearly six months negotiating an ESI protocol that Judge Corley
 2 entered. Notably, that protocol does *not* require written ESI disclosures. Ex. I. After agreeing to this
 3 protocol, Plaintiffs sought to side-step the parties' agreement and asked Judge Corley to order "written
 4 ESI disclosures" or a 30(b)(6) ESI deposition. Dkt. 428 at 5. Judge Corley rejected this request: "On
 5 the ESI discussions, I'm not going to require any more—I'm not going to do what the plaintiffs
 6 proposed. . . . I'm not satisfied there's anything more in particular that you need." Ex. J at 6:16–21.

7 One year later, Plaintiffs tried again. When Judge Corley authorized a deposition for Plaintiffs
 8 to explore whether any shared data about the Named Plaintiffs had not been produced, Plaintiffs issued
 9 a 30(b)(6) notice that again sought detailed testimony about Facebook's data sources. The first three
 10 topics in Plaintiffs' notice ask for the same information Plaintiffs sought previously and now seek here:

- 11 1. The format, nature, and location of User Data as set forth in Discovery Order No. 9, including
 12 how and why such Data is collected, obtained, or inferred, and how it is maintained.
- 13 2. The name, location, and function of all of Facebook's electronic or database systems that
 14 contain User Data, including but not limited to Hive and Data Warehouse, whether stored on
 15 an individual user level or in another form.
- 16 3. The identity, nature and location at Facebook of all the metadata associated with User Data . . .

17 Ex. S at 6. Judge Corley quashed that deposition notice. *See supra* at 6. Plaintiffs' requests for
 18 document discovery on the same topics should meet the same fate.

19 Even though Judge Corley rejected Plaintiffs' requests for ESI discovery, in mediation
 20 Facebook voluntarily produced much of the information Plaintiffs demand, *see* Ex. AA (share file),
 21 because Plaintiffs assured the mediators this information would advance the parties' discussion about
 22 user data. Plaintiffs do not even acknowledge that production; they simply ask for more.

23 Had Plaintiffs reviewed the materials Facebook provided, they would have learned a
 24 tremendous amount about how Facebook stores data. The documents include two training videos
 25 intended to educate viewers as to how Facebook stores and queries data in the Social Graph. *E.g., id.*
 26 at FB-CA-MDL-01959889, FB-CA-MDL-01960073. Facebook also produced detailed technical
 27 publications regarding its data infrastructure, *e.g., id.* at FB-CA-MDL-01959810, FB-CA-MDL-
 28 01959826 (academic articles regarding the consistency and functioning of Facebook's TAO system
 and describing Facebook's horizontally shared, geo-replicated relational database management

1 system), as well as internal instructional guides discussing Facebook’s data storage systems (including
 2 descriptions of individual databases, their functions, data schema employed, and tools used to query
 3 databases), *e.g.*, *id.* at FB-CA-MDL-01960039 (instructional overview of the Graph API), FB-CA-
 4 MDL-01960137 (instructional wiki entry providing descriptions of data tools), FB-CA-MDL-
 5 01960080 (instructional guide on storage options in the Social Graph), FB-CA-MDL-01960128
 6 (instructional guide on data tools), FB-CA-MDL-01960067 (instructional guide on searching with
 7 GraphQL). Facebook also produced dozens of articles and blog posts discussing its data
 8 infrastructure, *e.g.*, *id.* at FB-CA-MDL-01959804 (blog post describing Facebook’s top open data
 9 problems, including a description of its data stores and the tools used to query them), FB-CA-MDL-
 10 01959641 (article discussing the role of the MySQL database in supporting the social graph).

11 Given Facebook’s extensive voluntary production of materials Judge Corley held Plaintiffs
 12 were not entitled to, Plaintiffs’ claim that they are left in the dark falls flat. And Facebook has already
 13 told Plaintiffs that most of the additional materials they seek do not exist or do not exist in the form
 14 Plaintiffs have requested—such as a data map, a list of sources containing data about specific individual
 15 users, or an instruction manual explaining the workings of Facebook’s engineering infrastructure to
 16 laypersons. And Facebook has answered interrogatories asking it to identify databases that house user
 17 data. Ex. U. It is not clear what other information Plaintiffs’ vague and broad list is even asking for.

18 These are issues that can and should be resolved informally through discussion during the RFP
 19 meet-and-confer process, during which the parties can refine their requests, address any
 20 misunderstandings, and raise objections if needed. None of that happened here, likely for an obvious
 21 tactical reason: Plaintiffs know that if their current demands were properly teed up, negotiated, and
 22 mediated, they would be dead on arrival. The multiple problems with Plaintiffs’ list of demands simply
 23 highlight the soundness of the rule that a “motion to compel may not be used to enforce an ‘informal’
 24 request for documents or information.” *MAO-MSO Recovery, LLC v. Mercury Gen.*, 2019 WL
 25 1423772, at *3 (C.D. Cal. Feb. 19, 2019). As a result, even aside from all of the other problems with
 26 Plaintiffs’ motion to compel, it is unripe.

27 **IV. CONCLUSION**

28 Plaintiffs’ motion should be denied.

1 Dated: October 28, 2021

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